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**Human Rights Section
Office of the High Commissioner for Human Rights-Haiti**

**A Profile of Police and Judicial Response to Rape in
Port-au-Prince**

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Abbreviations

BAI	Bureau des avocats internationaux
BAL	Bureau d'aide légale
BPM	Brigade de la protection des mineurs
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
HPN	Haitian National Police
HRS	Human Rights Section (MINUSTAH)
IACHR	Inter-American Commission of Human Rights
ICCCPR	International Covenant on Civil and Political Rights
KOFAVIV	Komisyon Fanm Victim pou Victim
MCFDF	Ministère à la condition féminine et aux droits des femmes
MINUSTAH	Mission des Nations unies pour la stabilisation en Haïti
OPC	Office de la protection du citoyen
UNPOL	United Nations Police
UNFPA	United Nations Population Fund
UNWOMEN	United Nations Women
UNDP	United Nations Development Programme
URAMEL	Unité de recherche et d'action médico-légale

Glossary of Terms

<i>Acte d'accusation</i>	Indictment
<i>Cabinet d'instruction</i>	Office of the investigating judges at the Trial Court
<i>Chef du Parquet</i>	Chief Prosecutor
<i>Commissaire du gouvernement</i>	Public Prosecutor/State Attorney
<i>Cour d'Assises</i>	Assizes Court
<i>Flagrant délit</i>	Flagrante delicto
<i>Garde à vue</i>	Remand in custody
<i>Greffé</i>	Registry
<i>Greffier</i>	Clerk
<i>Juge de paix</i>	Justice of the Peace
<i>Juge d'instruction</i>	Investigating judge
<i>Ordonnance de main levée d'écrou</i>	Provisional order of release from pre-trial detention
<i>Ordonnance de non-lieu</i>	Order for dismissal of proceedings
<i>Ordonnance de renvoi</i>	Order for trial (issued by the <i>juge d'instruction</i>)
<i>Parquet</i>	Office of the Prosecutor
<i>Registre de la main courante</i>	Daily logbook
<i>Registre de plaintes</i>	Complaints registry
<i>Registre des retentions</i>	Detentions registry (for police custody)
<i>Substitut du procureur</i>	Deputy Prosecutor
<i>Tribunal correctionnel</i>	Magistrate's Court
<i>Tribunal de paix</i>	Justice of the Peace Tribunal
<i>Tribunal de police</i>	Minor Offences Court
<i>Tribunal de première instance</i>	Trial Court

EXECUTIVE SUMMARY

1. Rape in Haiti falls within the scope of common crime. State responsibility is triggered primarily where there is a failure to meet its due diligence obligation¹ to refrain from acts of violence against women, prevent and protect women from violence, punish perpetrators and compensate victims of violence. As recognized by the Committee on the Elimination of Discrimination against Women,² the occurrence of sexual and gender-based violence, including rape is inextricably linked to gender-based discrimination, which remains an issue of serious concern in Haiti, both in law and in practice.
2. Haiti does not have a functional national data collection system for sexual and gender-based violence (SGBV) including rape; there are therefore no precise statistics available. Where data is available, from State, NGO or UN sources, it invariably reflects a target population or zone, rather than a comprehensive analysis. As in other countries, many rape cases are never reported, lack of information on the reporting process, fear of retaliation from perpetrators and limited access to legal aid all discourage reporting.
3. In late 2011, MINUSTAH's Human Rights Section/Office of the High Commissioner for Human Rights-Haiti (HRS) conducted a study of rape cases reported to five police stations in the Port-au-Prince area between June and August 2010 to see how the cases had been managed by the criminal justice system. As of December 2011, just one case out of a total of 62 reported cases during the period under review had reached the prosecution stage, pending trial; and no cases have actually been tried. In addition, the HRS found that, with some exceptions, police records were not well kept, including those of the SGBV specialised units. If a report is lodged, police do not always explain to victims the importance of obtaining a medical examination within the 72 hours³ following the rape. The HRS found that without a medical certificate it is highly unlikely that a case will go to trial.
4. From its monitoring of the 62 cases, the HRS found that once complaints are registered the Haitian National Police (HNP) is generally diligent in referring cases on, but also found that the actual referral practice is inconsistent. In the HRS study, out of 62 complaints registered by police, 45 cases were referred to the *Parquet* in Port-au-Prince. However, only 25 cases were actually 'received' by the *Parquet* and recorded in its registry. Of the 25 cases it received, the *Parquet* referred 11 to be investigated by the *cabinet d'instruction*. Of the 11 cases referred to a *juge d'instruction*; four were dismissed for failing to meet minimum admissibility requirements (primarily the positive identification of the alleged rapist by the victim and the existence of a medical certificate); six are still being investigated; one case has been referred to trial. Thus, approximately 18 months after first being registered by the police none of the 62 cases had actually gone to trial.⁴
5. Haiti lacks the medical, psycho-social, and temporary protection assistance that survivors of SGBV require. There are no victim or witness protection programmes, despite reports of threats against some victims.

¹ Article 4 (c and d) of the UN Declaration on Elimination of Violence against Women, A/RES/48/104, 23 February 1994

² See General recommendation No.19 (violence against women). Committee on the Elimination of Discrimination against Women, 2nd Session, 1992.

³ Victims of rape should see a doctor within 72 hours of the crime to preserve forensic evidence, for doctors to administer emergency contraception and HIV preventive medication.

⁴ Despite not being taken into account in this study, the HRS also monitored all rape cases registered up to one year before and after the specific period under review and found that the number of prosecuted rape cases were very low during this period and were therefore consistent with this study.

6. Recommendations formulated in this report aim at preventing further victimization of rape victims and call on the State to adopt a precise definition of the crime of rape, repeal any law discriminatory to women; reinforce the capacities of police and judicial authorities on women's rights and on violence against women; implement a victim-centric approach where victims are aware of their rights and are always informed about the different procedures at all stages of the process through the police and the judiciary, and put a definite halt to the practice in which the *juges de paix* overreach their mandates by ruling in criminal cases, including rape.

7. The HRS also suggests that the Government of Haiti allocates a larger proportion of the national budget to state institutions involved in SGBV response, such as the *Ministère à la condition féminine et aux droits des femmes* (MCFDF), to allow them to carry out their mandate fully. The Government should also ensure that police and judicial authorities fully recognize that a medical certificate is not a requirement for the prosecution of a rape case. Medical certificates may be useful to build a stronger case by illustrating the abuses and injuries endured by rape victims but should not be considered as a pre-requirement for prosecuting rape cases. Additionally, the development of any new template for medical certificates should be fully discussed with civil society organizations first. Lastly, the Government should ensure that the police are properly resourced to carry out investigations and arrests, rather than relying on victims to identify perpetrators and obtain arrest warrants from judicial authorities.

INTRODUCTION

A. Scope and Objectives of the Report

8. Violence against women, including rape, remains a systemic problem in Haiti. According to a 2009 Inter-American Commission on Human Rights (IACHR) report entitled “[t]he rights of women in Haiti to be free from violence and discrimination”, the IACHR highlights the “*dire situation of women [as] a result of the historical discrimination and inferior treatment they have faced because of their sex, compared to their male counterparts*”.⁵ The IACHR goes further and states that Haitian society tolerates this discrimination fuelling further violence and abuse against women.⁶ And while the State recognises the problem, its response to SGBV is fragmented and not understood as part of the broader objective of seeking to achieve women's rights and equality. This approach is also reflected in the importance the State gives to the Ministry of Women Affairs, known as the *Ministère à la condition féminine et aux droits des femmes* (MCFDF); in fact the latter is not properly funded and struggles to carry out its mandate properly. It is well-known that rape is under reported in Haiti.⁷ When rape is reported, victims are most often not able to obtain justice, despite the State's obligation to prevent, investigate, prosecute and provide remedy and reparation for victims of human rights violations.⁸

9. In an attempt to understand the challenges that victims face, this report seeks to analyse the effectiveness of the police and judicial response to complaints of rape made in the three main *commissariats* as well as two key *sous-commissariats* in Port-au-Prince.⁹ Thus, it is not necessarily

⁵ Inter-American Commission of Human Rights (IACHR) report “The rights of women in Haiti to be free from violence and discrimination” 10 March 2009, para 7.

⁶ *Ibid.*

⁷ While this report does not seek to analyze challenges in reporting violence against women, the HRS notes that reporting of violence is crucial to ensuring justice for victims and punishment of the perpetrators.

⁸ See General Assembly resolution A/RES/60/147 of 21 March 2006.

⁹ For ease of reference, these will be referred to as police stations in this report.

reflective of how cases of rape are processed by the police and the judicial system elsewhere in the country. Using this sample, the HRS has identified the main barriers victims face in accessing justice in rape cases and concludes with recommendations to State authorities on how to best address the weaknesses identified.

10. The HRS followed up on a total of 62 complaints of rape that were registered between June and August 2010 at the five police stations reviewed. The *Parquet* of Port-au-Prince received only 25 of these cases, and then referred 11 cases to be investigated by several *juges d'instruction*. The latter dismissed four cases, leaving the remaining under investigation, with the exception of one case that has actually been referred to trial. According to HRS research, no case actually went to trial well over one year after being first registered by the police.¹⁰

B. Methodology

11. To conduct its investigations and analysis, the HRS followed complaints of rape registered with the police between June and August 2010 in five different police stations in the Port-au-Prince area (West Department)¹¹ out of a total of 18 police stations in the area. The five police stations were chosen because they cover a large area of metropolitan Port-au-Prince, including many high crime neighbourhoods. The period was chosen because it allowed the HRS to monitor the processing of rape complaints by the police and judicial systems at least a year and a half after they were initially registered with assumption that this would be enough time for the investigations to be undertaken. The HRS monitored how these complaints were addressed by State authorities from the moment of being reported to the police until, potentially, the treatment of the complaints along the various stages of the criminal justice system.

12. Beginning in September 2011, HRS officers gathered data directly from the police stations selected. Some visits were often conducted in collaboration with MINUSTAH's Gender Section. HRS staff gathered data from the police stations' registries and archives, including the *registre de la main courante*, complaints records, and police custody records. Using these sources, the HRS was able to collect data on the number of rape complaints registered at each police station and the number of persons arrested in connection with sexual crimes. The HRS interviewed the head of each police station and, whenever applicable, police officers in charge of responding to sexual crimes.

13. The information collected was captured in an internal database with secured access.

14. The HRS then continued its monitoring and research at the level of the judicial system. In this regard, the HRS met with the registrars of the relevant offices of the *juges de paix*, *juges d'instruction* and the Prosecutor to establish whether the cases identified in the police stations had been referred onward to the justice system by the police and, if so, what action had been taken by the concerned authority in relation to each particular case.

15. The HRS also conducted interviews with representatives of *Bureau d'Aide Légale* (BAL),¹² *Office de la Protection du Citoyen* (OPC), international and local NGOs such as *Bureau des Avocats internationaux* (BAI) and hospital personnel. While not consulted in the design and implementation of the

¹⁰ While not core element of the study, the HRS also reviewed police and judicial records for up to one year before and after the reviewed period.

¹¹ Commissariats of Port-au-Prince, Cité Soleil, Delmas 33 and sous-commissariats of Fort National and Delmas 3.

¹² The BAL is a free legal aid service managed by the Bar association but it is entirely funded by international donations.

study, the following MINUSTAH components and UN agencies reviewed the draft of the report: Rule of Law, Gender, UNPOL, JMAC, UNFPA, UNDP, UNICEF, IOM and UN Women.

16. The HRS uses “she” when referring to victims of rape in this report as all the rapes reported to the police during the period under review were committed against women and girls. This should in no way be interpreted as an indication that men are not raped or sexually abused in Haiti.

C. Cooperation by State Authorities

17. The HRS received full cooperation from police and judicial authorities, including regarding access to their registries without prior notice being given. For instance, at the *Palais de Justice*, human rights officers had unrestricted access to information contained in the Register of the *Parquet* and the *Tribunal de Première Instance* (TPI). The various *juges d'instruction* were very cooperative and allowed HRS staff to access their registry and case files.

D. Difficulties Encountered

18. The lack of accurate data on the incidence of rape in Port-au-Prince is a serious long-standing problem affecting the overall response to rape. In addition, the earthquake impacted record keeping by either destroying existing records or preventing proper maintenance of new records, for example, at one *Tribunal de paix* visited, the HRS was unable to gain access to records from the relevant period in 2010 because the building had been destroyed in the earthquake and its record-keeping had not been adequately re-established. The HRS notes that the police and judicial authorities work in very difficult conditions and often lack basic resources such as furniture, computers, and vehicles to carry out their work correctly.

E. National and International Legal Framework

National

19. Under Haitian law, rape is classified as a *crime*¹³ and therefore it is subject to a 10-year statute of limitations. Crimes in Haiti should be tried exclusively by an Assizes court with or without the assistance of a popular jury. The former is only mandatory for trying what is considered by the criminal justice system as the most serious crimes “*crimes de sang*”, meaning a crime which resulted in the death of a person or a political crime. Rape in itself is not considered as being one of the most serious crimes. The maximum penalty for rape in Haiti is a ten years prison sentence if the victim is an adult and 15 years maximum if the victim is a minor under the age of 15.

20. The Decree of 6 July 2005¹⁴ modified article 278 of the Criminal Code regarding rape. The decree changed the categorization of rape from a crime against morals to a crime against the person. Whilst bringing some positive change, the decree did not properly address the issue of rape and sexual violence as it failed to accurately define the crime of rape and to list its elements. Judges and prosecutors

¹³ Offenses are classified according to their gravity. The lesser offense is classified as a “*contravention*”, then more serious ones are “*délits*” and finally, the most serious are called “*crimes*”. The classification of offenses is determined by the sentence they incur, from fines to prison terms.

¹⁴ *Décret modifiant le régime des agressions sexuelles et éliminant en la matière les discriminations contre les femmes dans le Code pénal*, adopted on 6 juillet 2005 and published in the *Gazette officielle*, Le Moniteur, 11 August 2005.

are therefore required to resort to definitions of rape found outside of the code¹⁵ thus leading to an inconsistent application of the decree and a generally low level of predictability in how cases will be treated.

21. Even though the Constitution provides for equal protection before the law,¹⁶ Haiti does not have national legislation prohibiting and punishing discrimination against women.¹⁷ In 2011, the MCFDF circulated a draft bill on the prevention, punishment and elimination of violence against women to local and international human rights NGOs, the United Nations and medical organisations providing assistance to victims of rape. The draft bill is at a standstill. If adopted, the new law will be an important step forward in relation to the fight against sexual and gender-based violence and discrimination against women in Haiti. The draft bill provides a definition of rape¹⁸ and repeals several provisions of the Criminal Code that are discriminatory against women.¹⁹

International

22. Haiti has ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (IA-CPPEVW). International human rights law imposes a range of obligations designed to protect women and girls from violence. This remains the case whether the violence is physical, sexual or psychological in nature and regardless of whether it occurs in the family, the general community, or is perpetrated or condoned by the state. Forms of violence against women encompass, but are not limited to battering, sexual abuse, violence, marital rape, sexual harassment, trafficking, forced prostitution and rape.²⁰

¹⁵ For example the definition of rape given by the *Unité de Recherche et d'Action Médico-Légale* (URAMEL) : "acte de pénétration sexuelle, commis sur la personne d'autrui par violence, contrainte, menace ou surprise".

¹⁶ Article 18 of the Constitution of Haiti, 29 March 1987 « *Les Haïtiens sont égaux devant la Loi...* » Note that the preamble also addresses discrimination, but the operative provisions of the Constitution do not.

¹⁷ See CEDAW Concluding Observations, CEDAW/C/HTI/CO/7 under the framework of "principle of equality, definition of discrimination and discriminatory laws" noted that "the State party's Constitution provides that international instruments take precedence over national law and can be directly applied, the Committee remains concerned at the absence of domestic legislation prohibiting discrimination against women and providing sanctions for such discrimination. In this respect, the Committee notes the intention of the Ministry for the Status of Women and Women's Rights to draft a gender equality bill as a part of implementation of its 2008-2009 action plan." The Committee also urged Haiti "to expeditiously draft and adopt the gender equality bill and to include a definition of discrimination against women that encompasses both direct and indirect discrimination in line with article 1 of the Convention as well as the principle of equality between women and men and the provision of sanctions for discriminatory acts in line with article 2 of the Convention."

¹⁸ *Tout acte de pénétration sexuelle ou tentative de pénétration sexuelle, par voie génitale, anale ou orale, même par l'introduction d'un objet quelconque dans la voie génitale, anale ou orale commis sur la personne d'autrui par violence, contrainte, menace, surprise ou pression psychologique est un viol.*

¹⁹ It is worth noting that the decree of 8 October 1982 decriminalized female adultery.

²⁰ In international criminal law, a leading case on SGBV is from the International Criminal Tribunal of Rwanda (ICTR). In its decision of Prosecutor v. Jean-Paul Akayesu, Judgment, Case No. ICTR-96-4-A, 1 June 2001 Judgment, the ICTR in the context of crimes against humanity, defined sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. The ICTR also defined the mass sexual assaults as genocide. *Prosecutor v. Z. Delalic and others ('Celebici')*, ICTY case no. IT-96-21-T, Trial Chamber Judgment, 1998; *Prosecutor v. A. Furundzija* ICTY case no. ICTY-95-17/1-T, Trial Chamber Judgment, 10 December 1998 and the Trial Chamber Decision, 16 July 1998; and *Prosecutor v. D. Kunarac and others*, ICTY case no. IT-96-23, Trial Chamber Judgment. Sexual violence is not limited to physical invasion of the

23. Specific articles of the ICCPR establish core guarantees²¹ including the right to life and the right to be free from torture and cruel, inhuman or degrading treatment, which are non-derogable. Violence against women has been recognized as a form of discrimination seriously inhibiting women's ability to enjoy fundamental human rights and freedoms under international human rights law.²²

24. The 1993 UN Declaration on the Elimination of Violence against Women defines violence against women as “[a]ny act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.” Gender-based violence has been further defined as “violence directed against a woman because she is a woman or which affects women disproportionately.” This Declaration also adopted the concept of due diligence as a yardstick to assess whether the State has met its obligation to prevent and protect women from violence, punish perpetrators of violent acts, whether perpetrated by the State or private actors, and to compensate victims of violence.²³

25. The Committee on the Elimination of Discrimination against Women notes that States parties are required to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur.²⁴ Furthermore, women who suffer violence should be informed about and be provided with access to the mechanisms of justice and to effective remedies for the harm that they have suffered, as provided by national legislation. Haiti's obligation involves ensuring that women have access to both criminal and civil remedies and that effective protection, support and rehabilitation services are established for survivors of violence. Under CEDAW, Haiti is obliged to adopt measures towards the elimination of violence and discrimination against women. Under the IA-CPPEVW, the State has a duty to adopt measures to address the causes and consequences of violence against women, including a due diligence duty to investigate, prosecute and punish rape.²⁵

26. It is now well established under international law²⁶ that violence against women is a form of discrimination against women and a violation of human rights. States' obligations to respect, protect, fulfil and promote human rights with regard to violence against women encompasses the responsibility to prevent, investigate and prosecute all forms of, and protect women from, such violence and to hold perpetrators accountable.

27. States are responsible under international law for human rights violations and acts of violence against women perpetrated by the State or any of its agents. Such responsibility arises not only from State actions, but also from omissions and failure to take positive measures to protect and promote rights. States must refrain from committing human rights violations. They also have a duty to prevent human rights abuses by non-State actors, investigate allegations of violations, punish wrongdoers and provide

human body and may include acts which do not involve penetration or even physical contact. Sexual assault is not limited to physical invasion of the body either but rather the violation of the sexual integrity of the person of which penetration may or may not be a part.

²¹ See e.g. articles 3, 5, 7, 9 and 26 of the ICCPR.

²² CEDAW, General Recommendation No. 19 (1992) on violence against women.

²³ See Velasquez Rodriguez v. Honduras, 29 July 1988, Series C: Decisions and Judgments, No. 04.

²⁴ General Recommendation No. 19 (1992) (calling on States to act with due diligence to prevent and to respond to violence against women). ICCPR, article 2 (3) (dealing with the right to an effective remedy).

²⁵ Art. 7(b) requiring States to “apply due diligence to prevent, investigate and impose penalties for violence against women”.

²⁶ See General recommendation No. 12 (eighth session, 1989) of the CEDAW Committee on Violence against women.

effective remedies to victims. States are accountable for the actions of non-State actors if they fail to act with due diligence to prevent, investigate or punish such acts and provide an effective remedy.²⁷

28. Furthermore, the Convention on the Rights of the Child (CRC) also requires that States parties “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”[...]. “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.²⁸

29. International law also requires that States ensure the right to access justice and fair and impartial proceedings,²⁹ as well as to provide proper assistance to victims seeking access to justice. As stated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “[v]ictims should be treated with compassion and respect for their dignity. They are entitled to access the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered”.³⁰ If justice systems are discriminatory by not ensuring equal access to justice for all, those who are in vulnerable and marginalized situations become even more vulnerable and marginalized.

30. Specifically on the international level, the Special Rapporteur on violence against women has emphasized the responsibility of States to recognize sexual violence against women as a crime and to prevent, respond to, protect and provide remedies for acts of violence against women, whether such acts are committed by State or non-State actors.³¹ Furthermore, the Special Rapporteur on the independence of judges and lawyers underlined in a report to the General Assembly devoted to gender in the criminal justice system, the importance of integrating a strong gender perspective in all aspects of the criminal justice system and its procedures and formulated a set of recommendations in this respect.³²

I. BACKGROUND TO SEXUAL AND GENDER-BASED VIOLENCE IN HAITI

A. Long-Standing Occurrence of Sexual and Gender-Based Violence

31. According to the national report submitted by Haiti to the Human Rights Council,³³ “gender stereotypes continue to trigger discriminatory behaviour that sometimes ends in violence against women”. Sexual and gender-based violence is inextricably linked to gender-based discrimination prevalent in Haitian society and in institutional practices and norms that affect women’s access to justice

²⁷ Report of the Secretary General In-Depth Study on all Forms of Violence Against Women, 6 July 2006 A/61/122/Add.1 at paras. 254-255.

²⁸ Convention on the Right of the Child, Art.19 on the child’s right to protection from all forms of violence.

²⁹ Article 14 of the ICCPR and principle No 6 of the UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

³⁰ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

³¹ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, UN Doc. E/CN.4/2006/61 at paras. 14 and 61.

³² U.N. Doc. A/66/289 (10 August 2011), paras. 83 to 104.

³³ Universal Periodic Review, 12th Session, national report (Haiti) dated 19 July 2011, A/HRC/WG.6/12/HTI/1.

and their equal treatment under the law.³⁴ For example, victims refrain from reporting cases due to social stigma and shame associated with sexual violence,³⁵ as well as fear of reprisals by perpetrators. The national report further states that “*politics are essentially male-dominated in both Government and Parliament, as well as in local authorities and political parties*”,³⁶ the weak representation of women in politics is another reflection of the gender stereotyping present in Haitian society.

32. Despite much progress, the Haitian State is still facing huge challenges, especially lack of resources, to ensure access to justice to its citizens and to effectively prosecute and punish cases of sexual and gender-based violence, and to provide appropriate support to victims, including through reparative measures. The 12 January 2010 earthquake resulted in the lowering of the capacity of all ministries with a role in addressing justice issues, for instance, the MCFDF in leading action on sexual and gender-based violence.

B. Sexual and Gender-Based Violence Post Earthquake

33. In the aftermath of the 12 January 2010 earthquake, by May 2010, 1.5 million people were registered as living in approximately 1,300 camps, the large majority in Port-au-Prince. By early 2011, the number of people in camps was falling significantly, and continued to do so until reaching about 500,000 by the end of 2011.

34. The United Nations (UN) moved quickly to pre-empt a breakdown in security and a rise of SGBV in camps, organizing Joint Security Assessments (JSA) with HNP, UN Police (UNPOL) and military, and UN civilians, to assess the security risks in consultation with people, especially women, living in camps. As a result of an initial March 2010 JSA and a follow-up assessment in May 2010, the UN put in place a strategic policing plan for the most at-risk camps, in addition to numerous other efforts. The policing plan included a requirement, at the request of women living in camps, that UN patrols be conducted on foot through the middle of camps at night.

35. Despite these and other efforts by Haitian authorities and the international community, reports of an increase in SGBV in camps continued through the mid to late 2010.³⁷ UNPOL analysis suggested that comparatively high incidence of SGBV in and around certain camps corresponded with high crime rates

³⁴ See combined initial, second, third, fourth, fifth, sixth and seventh periodic reports of States parties, Haiti, CEDAW (CEDAW/C/HTI/7), para. 15.2 (ongoing inequalities).

³⁵ Haiti National Report to the Human Rights Council, Universal Periodic Review, 12th Session, 19 July 2011, para. 48, A/HRC/WG.6/12/HTI/1.

³⁶ *Ibid.*, para. 47.

³⁷ On December 22, 2010, the IACtHR granted precautionary measures for all the displaced women and children living in 22 camps for internally displaced persons in Port-au-Prince, Haiti, in the wake of the January 10, 2010 earthquake. The request for precautionary measures alleges a pattern of sexual violence and a series of acts of violence against the women and girls residing in said camps. The Inter-American Commission called on the State: a) to ensure the availability of adequate medical and mental health care for the victims of sexual violence located in accessible areas; b) to provide adequate security at the camps for internally displaced persons, including the lighting of public spaces, regular patrols within the camps as well as outlying areas, and to increase the presence of female police officers assigned to patrol details and local police precincts; c) to ensure that the law enforcement agencies tasked with responding to incidents of sexual violence receive the necessary training to respond appropriately to reported cases of sexual violence and provide the necessary security to the camps; d) to promote the establishment of special investigative police units within the Office of the Attorney General with a view to investigating rape cases and other crimes of sexual violence; and e) to ensure that grassroots women’s groups fully participate in and have a steering role in the planning and implementation of policies and practices aimed at combating and preventing rape and other forms of sexual violence in the camps.

within the same neighbourhood, suggesting that the SGBV incidence was not necessarily specific to the camps but rather to the neighbourhood. According to HRS and UNPOL reports, the crime situation in camps steadily deteriorated over time as more and more people started moving out, leaving empty tents behind. The crimes were frequently committed by people known to the victim, such as men living within the neighbourhood. Thus the conditions of persons living in camps have certainly created greater vulnerability to sexual violence, but camp situations should not be examined in isolation. Rather they should be seen as a more visible example of a systemic and structural problem in Haitian society.

36. A joint group of local organizations³⁸ reported they had recorded around 500 cases of sexual violence in Port-au-Prince in 2010 alone. Of this total, 60 to 80 cases were reported to have been referred to the prosecution as of December 2011 and only 26 cases were transmitted from the prosecution to a *juge d'instruction*. According to a representative of these women organisations, the *juges d'instruction* referred six cases for trial, although no trials have taken place to date.³⁹ According to interviews with representatives of the *Bureau des Avocats Internationaux* (BAI), the low number of cases processed by the judicial system is due to various factors, including that (i) the police is not sufficiently trained to deal with SGBV cases and do not react on time to arrest suspects, (ii) the victims and her family are usually blackmailed or receive threats and eventually decide not to pursue the case out of fear, (iii) the investigation by the judge is not conducted within a reasonable time as the judges lack means and human resources, (iv) there is no single agreed on template⁴⁰ format for medical certificates thus creating confusion for medical services about which elements need to be recorded for a judicial procedure and (v) certain medical institutions, such as *Hôpital Général*, require up to three medical doctors to sign the medical certificate to be issued, which can take several weeks.

C. National Policy Framework and Action

Ministère à la Condition Féminine et aux Droits des Femmes

37. Addressing the causes, effects and perpetrators of SGBV is the responsibility of a wide range of different actors, from the Parliament to the police. Nevertheless, the MCFDF is the State entity with primary responsibility for the definition and implementation of policies as regards SGBV. The MCFDF is a decentralized ministry with a Directorate in each department across the country. It was created on 8 November 1994 and it is governed by the Decree of 22 December 2005 on its organisation and functioning. The MCFDF has a normative and regulatory role and its mandate includes oversight for the proper application of international conventions regarding the protection of women's rights to which Haiti is a party. The Ministry also has a cross-cutting mandate to mainstream women's rights amongst the other ministries and State agencies. The Ministry, in collaboration with the UN, submitted a report to the Committee that monitors the implementation of CEDAW in 2008. The CEDAW Committee issued its recommendations shortly thereafter.⁴¹

³⁸ FEM CAM, KOFAVIV, and FAVILEK.

³⁹ The six cases are the total number of cases of rape that have been referred for trial by the *juge d'instruction*. A trial judge has not been allocated for any of these cases. The illustrated cases include the complaints from the HRS sample of June-August 2010.

⁴⁰ A template was developed by URAMEL in 2004 and endorsed by the Ministry of Justice in 2008. However, this template is not widely used in Haiti, including the General Hospital of Port-au-Prince. During a workshop hosted by the World Bank on 9 February 2012 brought together at least 15 civil society organizations together in Port-au-Prince to draft a common template for sexual violence cases. The URAMEL template was not used as a basis for work.

⁴¹ CEDAW/C/HTI/CO/7 (2009).

38. The MCFDF is responsible for the implementation of a National Action Plan on the elimination of discrimination against women. The plan covered the period from 2005 to 2011 and was intended to prevent violence committed against women and girls and assist rape victims by launching community assistance programs for them. Under the auspices of the MCFDF, Haiti adopted a “National strategy to prevent and punish violence against women and girls” in 2005 and launched the *Concertation Nationale contre les Violences Faites aux Femmes*, a partnership between State ministries, civil society, and international partners including UN agencies to implement the national plan of action. In 2006, the *Table de concertation*, with the support of MCFDF and UNFPA, compiled a directory of national institutions providing services to survivors of violence in Haiti.⁴²

39. The government institutional response against sexual and gender-based violence is unclear. Although the MCFDF has emphasized the importance of fighting impunity for SGBV as a primary method for ending violence against women, its structure is weak. The platform of the *Concertation Nationale* is now organised as a civil society organisation to which the MCFDF has retained an observatory status. The MCFDF is also co-chairing the sub-cluster against SGBV with UNFPA. The multiplicity of actors affects the coordination. The national plan was revised in 2011 and a new five-year plan is planned to be launched.

Support to Victims

40. Despite the provision of some assistance by the State, the respondents interviewed by the HRS indicated that they lacked the medical, psycho-social, and temporary protection (e.g. temporary housing) assistance that survivors of rape require. Despite much effort by local and international actors,⁴³ few victims are aware of the limited services that do exist, despite distribution of referral cards nationwide by all relevant actors (State and NGO) listing the name and contact details of organisations that provide assistance to victims of sexual and gender-based violence.

41. Prior to the January 2010 earthquake, progress was observed in monitoring and documentation of rape, provision of specialized services for victims, legislative reforms, and the successful prosecution of some cases. State response was largely stalled throughout 2010 in spite of MCFDF co-chairing the Sub-cluster on gender-based violence with the United Nations Population Fund (UNFPA) during 2010-2011. The MCFDF effectively resumed its activities in 2011, including the *Concertation*, but requires technical support and resources to become fully functional, including the provision of specialized services for women.

42. Only 1.40 percent⁴⁴ of the national budget was allocated to the MCFDF in the draft budget 2011-2012.⁴⁵ The lack of resources makes it difficult for the MCFDF to carry out its mandate properly,

⁴² *Répertoire provisoire des institutions offrant des services aux femmes violentées*, Mai 2011, Ministère de la Condition féminine et aux droits des femmes, Ministère de la santé publique et de la population and *Concertation nationale contre les violences faites aux femmes*.

⁴³For example, over the past one year (since March 2011), UN Police have established over 14 UNPOL Gender Adviser Focal Points (at least one in each region), along with SGBV focal points throughout IDP camps and Commissariats. Additionally, each UNPOL SGBV Adviser is complemented by a parallel HNP SGBV Focal Point counterpart, also established by HNP in conjunction with MINUSTAH over the last year. Additionally, MINUSTAH Police have established and continue to build infrastructure for separate rape and SGBV related crime reporting rooms in numerous Commissariats, including those in camps, to allow victim reporting confidentiality. This practice has also increased victim confidence and trust in local law enforcement, resulting in increased case reporting.

⁴⁴ Approximately HTG 121 billion (approximately USD 43 million).

⁴⁵ *Projet de loi de finances de l'exercice 2011-2012*.

especially with regard to implementation of the National Action Plan on the elimination of discrimination against women.

II. THE HAITIAN NATIONAL POLICE RESPONSE TO RAPE

A. Police Capacity with respect to Rape

Haitian National Police Resources

43. The fight against sexual and gender-based violence is not institutionalised within the HNP. Despite positive isolated developments, there is no mainstreamed policy to combat SGBV. Police officers trained on SGBV respond to the *Bureau National de Coordination des Questions de Genre et affaires féminines*. But the *Bureau* does not have a defined mandate; it is understaffed, under resourced and is not deemed a priority by the HNP's *Direction Générale*.

44. In general terms, the HNP is seriously under resourced. Most of the police officers have to work in temporary facilities and lack the basic equipment to carry out their duties. All of the police stations visited lacked proper office furniture and equipment, including vehicles⁴⁶ to carry out investigations and arrests. When an UNPOL unit is deployed to a given police station, they are often relied upon by the HNP to drive them around to carry out arrests and/or to accompany victims to the hospital.⁴⁷

45. Police officers explained to the HRS that the lack of basic equipment, including cars, computers, telephones, and electricity, severely impede to carry out investigations and arrests. In both Cité Soleil and Port-au-Prince, the officers complained of a lack of vehicles to patrol. In Cité Soleil, two out of ten cars were out of service and UNPOL used their cars to support the HNP, including driving rape victims to the hospital. The lack of equipment prevents the police from conducting investigations in rape cases but does not prevent the police from registering the complaints, as a process that can simply be done by recording the complaint in the police registry.

Haitian National Police Capacity and Rape Response

46. In 2008, UNFPA financed a project which trained several HNP officers attending the *Académie de police* in Port-au-Prince on women's rights, including on how to address sexual and gender-based violence complaints, interview victims and the usage of referral pathways. In the same year, specialized units on SGBV, *Unité de Lutte Contre les Violences Faites aux Femmes*, began to be set up in police stations in Port-au-Prince and Delmas. These specialized units still exist but were greatly affected by the 12 January 2010 earthquake as several of the officers who had been trained by the *Concertation nationale*

⁴⁶ According to UNPOL, as of February 2012 the HNP have actually more vehicles than they would need. In fact MINUSTAH has recently made a significant donation of vehicles to HNP for their use. The main challenge, however, is actually maintenance of the equipment and vehicles. HNP and other actors involved need to be trained to deal with maintenance upkeep and re-training to ensure vehicles and other donations are used in the most advantageous way possible. Bilateral partners have expressed similar challenges regarding maintenance of donated equipment.

⁴⁷ UNPOL assesses the different *commissariats* and provides support in the basis of that assessment. For example, Delmas 33 is still being built, following the earthquake, but still also has co-located HNP and UNPol conducting patrols daily and joint patrols from the *commissariats* located in Delmas. Some *commissariats* are "permanently monitored", while others are rotationally monitored. Although MINUSTAH Police does not have capacity or resources to be in all *commissariats* on a daily basis, efforts to ensure co-location at critical and strategic *commissariats* are on-going.

with financial support from UNFPA died or were re-assigned to other duties after the quake. MINUSTAH UN Police SGBV team, funded primarily by Norway, supported the HNP specialized units on SGBV and provided mid-level and investigator trainings to HNP on SGBV issues. Trainings by UN Police also include SGBV workshops for camp residents.

47. The special unit at the Port-au-Prince police station blames their inability to provide better service and protection to victims of rape on understaffing. There is only one fixed-term staff member on duty as the other officer working in this specialised unit is actually detached to Fort National police station. The specialized unit in the Delmas 33 police station is no longer operational because the premises which housed the unit were reallocated to other sections of the police station following the destruction of the other buildings in the compound during the earthquake.

48. The specialized unit was set up as a pilot project in Fort National in 2009. A Memorandum of Understanding was signed between the MCFDF, the Ministry of Justice and Public Security (MJSP) and the Ministry of Public Health and Population. Different women's organizations were involved. MINUSTAH provided institutional and technical support to the HNP to facilitate the implementation of pilot reception services for women and girls victims of gender based violence. Fort National was chosen due to the high prevalence of rape in the area and the presence of a MINUSTAH contingent which provided victims of SGBV with a community doctor on site until January 2010. At present, two male police officers work exclusively with cases of rape within the specialized in Fort National. The earthquake destroyed the only room where they could hold private interviews therefore they now share a large tent with the rest of the police team and conduct interviews and statement taking mostly in an open courtyard or in a corner inside the tent.

49. This police station does not have a police vehicle assigned to them and each time they must proceed with an arrest, they must ask the assistance of either the Port-au-Prince police station or UNPOL. The officers believe that their location in Fort National is now an obstacle to receiving complaints, especially for rape as according to the officers, victims' perceptions have reportedly changed and they are now reluctant to go to Fort National because of the MINUSTAH military battalion. According to the same police officers, before the earthquake, the specialized unit received approximately one hundred complaints per month but this number has fallen dramatically after 12 January 2010, reaching less than five lodged complaints for rape in any given month ever since.

50. With regard to training in women's rights and sexual and gender-based violence, only the police officers working in the specialized gender units reported that they had received some training in SGBV despite the provision of several trainings by MINUSTAH components to the HNP. At the Fort National police station, the police officers working in the specialized unit received training in SGBV when the unit was created in 2009. In the other police stations, police officers interviewed stated that they had not been trained on SGBV and on the way to deal with SGBV cases.

B. Registration of Complaints, Investigations and Arrests

Police Registration of Rape Complaints

51. Most rape cases recorded by the police are reported by victims at the nearest police station. The victims are supposed to be immediately interviewed by the receiving police officer who will determine whether or not the crime could be considered as a *flagrante delicto* case. According to the *code d'instruction criminelle*, the police have extended powers to carry out investigations in *flagrante delicto*

cases⁴⁸ giving them powers to proceed with arrests, detention and searches without a warrant previously issued by a judge. The law does not precisely define *flagrante delicto* but in practice it is interpreted as including any crime committed within 24 hours.⁴⁹

52. A handful of victims also register their complaints directly at the *Tribunal de paix*, the *juge d'instruction* or at the *Parquet* but complaints registered this way were not taken into account in this study. Regardless of where the complaint was filed, these complaints will eventually end up at the *Palais de justice* in Port-au-Prince, and thus can be tracked through the judicial system.

53. According to the HNP, victims are frequently unable to identify their aggressors, especially when attacks occurred at night. In the Delmas 33 police station, a police officer outlined how difficult it is to identify perpetrators, especially when victims were raped at night time in camps due to the lack of illumination and the ease of access to the increasingly number of empty tents. Under Haitian law, legal action can be taken against unidentified perpetrators. However, the majority of police officers informed the HRS - information confirmed by BAI and several other national human rights NGOs - that they systematically refuse to register complaints if the victim is unable to identify her aggressor. In the course of the HRS monitoring, only one exception to this rule was found. In these cases the police, according to HRS monitoring, will generally only refer the victim to a hospital and they take no further action.

Police Interviews with Rape Victims

54. Premises at the five different police stations in Port-au-Prince reviewed by the HRS are not adapted to receiving victims of rape as the victims are interviewed in a large open room in front of anyone present in the room (police officers and complainants waiting to file their complaints). The HRS witnessed an adolescent girl accompanied by her mother and sister filing a complaint for rape in front of at least 15 people who could overhear the interview, making the victim manifestly uncomfortable. Despite assurances given by the police officers, it was not apparent to the HRS that female police officers are systematically used to interview female victims of rape. In fact, the Port-au-Prince police station was the only one where a female police officer was available to answer questions from HRS staff on rape. Consequently, rape cases are registered in the same way as any other complaint, without affording the necessary privacy and care. The lack of female police officers trained to receive cases of rape is a major concern as female victims of sexual violence are often very reluctant to tell their stories to men.

Medical Certificates

55. Despite the fact that police and judicial authorities do not need a medical certificate for receiving complaints of rape, in practice, for a complaint to be considered *prima facie* admissible, the victim must provide a medical certificate attesting to the existence of circumstances which may indicate that a rape occurred. This practice may have negative consequences on the ability of cases to move forward and as a result, impact on the victim's right to seek redress. Whether or not a case is prosecuted should not depend on the existence of a medical certificate. In cases of sexual and gender-based violence, the medical certificate is to be delivered for free.⁵⁰ The police officers interviewed stated that they systematically inform rape victims of the need to have a medical certificate and that they refer victims who have not yet

⁴⁸ *Loi sur la police judiciaire et les officiers et agents de police qui l'exercent* of 29 November 1994.

⁴⁹ Article 31 of the *Code d'instruction criminelle* does not define the time frame under which *flagrante delicto* applies, the 24 hours window is the result of doctrine and jurisprudence and this practice has now become customary.

⁵⁰ According to a Memorandum of Understanding signed between the MCFDF, the Ministry of Public Health and Population and the Ministry of Justice and Public Security.

seen a doctor to public hospitals and/or international NGOs to obtain a medical certificate. However, based on interviews, the HRS noted that the police still fail to explain to victims the importance of obtaining a medical examination within the 72 hours following the rape. The HRS observed that the lack of a medical certificate did not *per se* prevent the police from registering complaints.

56. For instance, at the Fort National police station, victims who are not in possession of a medical certificate at the time they come to lodge their complaint are referred to the *Hôpital Général* after their testimony is taken. In other police stations, the police referred victims to *Médecins sans frontières* (MSF), *Centre Gheskio* or the *Hôpital Général*. The place of referral was more a matter of habit in a given police station than actually a result of a set referral procedure.

57. According to the gynaecological unit of the *Hôpital Général* in Port-au-Prince which is in charge of providing free medical care to female rape victims, most women only seek medical assistance several days and sometimes weeks after the crime was committed, and most often only after a police referral. The staff of the *Hôpital Général* who examine and treat victims of rape are well-trained and have the basic medical equipment to carry out their work, including emergency contraception, HIV and other sexually-transmitted diseases testing. The hospital is assisted by an international NGO, *Médecins du monde*.

58. Even where a victim does go to a medical facility, this alone is not always sufficient to obtain the medical certificate. If the victim goes to a public hospital, like the *Hôpital Général* in Port-au-Prince, the procedure is such that up to three doctors are required to examine the victim and/or sign the certificate; victims often have to wait for weeks before the certificate is actually signed and may have to return to the hospital several times because the relevant doctors were either absent or unavailable or because they have to undergo tests or collect results. Medical certificates are more easily obtainable at international NGOs as the latter use a more simplified procedure whereby only one or two signatures are required. According to the *Parquet*, NGO-issued medical certificates have the same probative value in Court as those issued by a public hospital.⁵¹

59. Gynaecological treatment and nursing staff at the *Hôpital Général* stated that the number of rapes reported to them noticeably decreased after the 12 January 2010 earthquake. The gynaecological unit cited the sharp increase in the numbers of international NGOs working in the field of women's health post-earthquake as the main reason for the decrease in use of their services. They also stated that women who reported rapes shortly after the attack were more commonly women who had benefited from better education and held a more favoured economic status. According to hospital personnel, poor women usually only come after a police referral and well after the 72 hours window. In fact, they said poor women often only report a rape to the hospital if they experience serious health complications caused by the rape, up to several months later. There is no cost involved to cover the fees to obtain a medical certificate, except transportation costs which can be prohibitive for poorer women.

60. If the victim decides not to seek a medical certificate or if she visits a medical facility for an examination too late for the examination to be effectively conducted and for a certificate attesting to the existence of circumstances which may indicate that a rape occurred to be issued, even if the police registers the complaint and actually refers the case to the *Parquet*, the latter is very likely to dismiss the case for lack of *prima facie* evidence. The medical certificate therefore remains a key element to the successful processing of a rape complaint file by the police and the judiciary in Haiti.

Police Investigation of Rape Complaints

⁵¹ A *circulaire* issued by the Ministry of Justice in 2007 states that “tout certificat d'un médecin qualifié régulièrement habilité à pratiquer sur le territoire”.

61. Even where perpetrators' identities are known, the police explained that it can still be difficult to locate them, especially if they belong to gangs or are protected by neighbours. Despite the legal obligation to investigate,⁵² the police interviewed indicated that they do not systematically investigate each complaint or search for alleged aggressors in every case of rape. In addition, they stated that HNP officers do not necessarily visit the crime scene or seek out eyewitnesses who can provide statements. Claims by advocates support these statements.⁵³ In HRS interviews with the HNP, officers also stated they do not give the same level of importance to rapes as they do to other crimes, such as murder or banditry. In the latter, the police do carry out investigations and arrests without relying on victims to guide them through the investigation.

62. If the alleged aggressor is a minor, the police station should refer the case to the *Brigade de Protection des Mineurs* (BPM), a specialized unit of the HNP. The BPM should then conduct a preliminary enquiry and then, where appropriate, refer the case to the *Parquet*. Similar to the regular police station, the BPM will cease to follow up on a case once the case is referred further to a *juge de paix* or the *Parquet*.

Arresting Suspects

63. As indicated above, the HNP has broad investigatory powers in *fragrante delicto* cases. According to information provided to the HRS by police officers, identification of the alleged perpetrators of rape cases is frequently done by the police driving the victim to wherever the alleged perpetrator is thought to be and the victim then identifies the alleged perpetrator by simply pointing from the police car.⁵⁴ Although widespread in rape cases, this practice is contrary to article 10 of the Criminal Procedure Code which states that the police, and not the victims, should seek to find perpetrators of crimes.

64. If the police do not deem the crime to be a *flagrante delicto* case, only the *juge d'instruction* is mandated to issue arrest warrants. However, the police generally refer victims to a *juge de paix* instead. The latter practice is illegal and not limited to rape cases. The victim is advised to go herself to the nearest *Tribunal de paix* to obtain an arrest warrant which is easily granted by the judge after a summary review of the case. If the complainant knows the aggressor, an arrest warrant may be issued to the victim who is then required to return to the police station to request the police to proceed with the arrest.

C. Police Referral of Rape Complaints to the Criminal Justice System

65. The HRS observed that, once complaints are registered, the police was generally diligent in referring the cases further. However, based on the HRS information, the police practice as regards rape cases does not follow a regular and defined operational procedure. In practice, the HRS found that cases were referred to different *juges de paix*, the BPM or to a *commissaire du gouvernement*, without any clear criteria as to which actor was appropriate, and without any consistent practice. For instance, some police stations referred all of their rape cases to a *juge de paix*, others to the *commissaire du gouvernement*, and some split their referrals between *juges de paix* and the *commissaire du gouvernement*. The same

⁵² Article 10, *Code d'instruction criminelle* : [La police est chargée] ... de rechercher les crimes, les délits et les contraventions qui auront porté atteinte aux personnes, ou aux propriétés.

⁵³ HRS interview with BAI, 16 November 2011. In one interview with a police officer, when the HRS asked why investigations were not made, he responded "it is just rape", *sous-commissariat*, Delmas 33.

⁵⁴ It is worth noting that in some cases, the police car windows were tinted thus protecting the identity of the witness.

inconsistency was found in cases involving minors, for example, at the Delmas police stations all rape cases involving a minor were referred to the BPM whereas in the other police stations only a few, if any case, was ever referred to the BPM.

Complaints referred by the Police to a *Tribunal de Paix*

66. According to their detention logbooks, from June to August 2010, the *commissariat* of Port-au-Prince referred a total of 14 rape cases to one of the three *Tribunaux de paix* of Port-au-Prince, namely “Nord”, “Sud” and “Est”, after conducting *prima facie* investigations. The registry did not specify which of the three *Tribunaux de paix* of Port-au-Prince a particular case was referred to. However, the victims knew which tribunal had been designated as they were personally required to take their case files to the *tribunaux*.

67. The HRS visited each of the three *Tribunaux de paix* with the objective of following the progress for each case:

- a. after consulting the registry at the *Tribunal de paix* “Nord”, the HRS found that no rape case appeared as having been referred there by the HNP since the earthquake.
- b. at the *Tribunal de paix* “Sud” it was impossible for HRS staff to track any of the cases because no form of registry whatsoever is kept there. After the tribunal building was destroyed in the 12 January 2010 earthquake, the *juge de paix* took an office in the bedroom of a shopkeeper who lives and works directly opposite the destroyed building and who offered his bedroom to be used as a tribunal during the day.
- c. at the *Tribunal de paix* “Est” the HRS was able to locate nine cases of rape referred by the police and observed that the tribunal’s record keeping was actually relatively good and well organised.

68. The HRS later found that despite their records showing that all their rape cases were transferred to a *Tribunal de paix*, the Port-au-Prince *commissariat* had transferred two of the files directly to the *Parquet* thus demonstrating a serious inconsistency with their registry.

Cases referred by the Police to the *Parquet*

69. According to the records, a total of 45 rape cases covering the period under review were referred to the *Parquet* by the *commissariats*, the BPM and the *Tribunaux de paix* of Port-au-Prince studied by the HRS during June to August 2010. However, only 25 of these cases were received and recorded in the registry of the *Parquet* in Port-au-Prince. According to the Bar of Port-au-Prince, the unaccounted for cases are mainly due to a lack of diligence by the *Tribunaux de paix*. The *Parquet* of Port-au-Prince also confirmed this theory stating that the *juges de paix* regularly fail to inform the *Parquet* of criminal cases because the former reach “amicable settlements” between the victim and alleged perpetrator.

70. Only the Delmas 33 police station and the BPM were found to have referred rape cases directly to the *commissaire du gouvernement* without first going through a *juge de paix*. A total of seven cases concerning minors only were directly referred to the *Parquet* in this way. According to the HRS’ examination of the registry of the *Parquet* of Port-au-Prince, all but one of the cases directly transferred to them by the Delmas 33 police station and the BPM were properly recorded in the registry, despite some comparatively minor discrepancies between the police and *Parquet* registries regarding dates.

D. Record Keeping

71. Most of the records prior to 2010 were lost during the earthquake. The HRS found that the police did not keep their records in a uniform manner. Practice varied from police station to police station but

HNP record keeping was generally weak. The specialised units on SGBV did not keep their records on sexual and gender-based violence in better order than the average police station. The HNP often omit to collect information on the victim such as contact telephone numbers and sometimes even the full name. Hence, when the police, or later on in the investigation, the Prosecutor or the Judge, want to contact the victim, it is often impossible for them to do so, whether it be by phone, letter or in person. Prosecutors and judges who are unable to contact victims give up taking action on a case.

72. In the Port-au-Prince police station, despite the existence of the specialized service on SGBV, data on sexual violence was not kept separately. In fact, record keeping was disorganized and the officers were unable to find the complaints logs for 2010, only the arrests logbook. During its research, the HRS was often faced with a situation whereas only either the arrests or the complaints logbook was available, not both. Hence, in these cases, it was impossible to draw statistics on the number of arrests made as against the number of complaints registered for a given period. Even when both the arrests and the complaints logbooks were available, the police often did not mention the name of the victim in the arrests logbook or the name of the alleged perpetrator in the complaints logbook, thus often rendering it impossible to make a definite connection between a victim and an arrested suspect.

73. In the Delmas 33 police station, it was very difficult to locate the complaints and arrests logbooks as they were all stored in a box, without any label or classification. The officers claimed that before the earthquake they had an organized filing system but that it was destroyed on 12 January 2010 and the box was the best solution they could find. In addition, most of the police reports were incomplete, lacking details such as the transcription of victim's statement or the arrest report. Their complaints logbook did not contain information on the identity of alleged aggressors even in cases when the victim was capable of identifying him.

74. In the Fort National police station, complaints and arrests are registered in the daily logbook and only later is the information typed and bound into a book to be used as their registry. As there is no holding cell there, there is no detention record book. The police report is generally transferred with the suspect from Fort National to the Port-au-Prince police station if an arrest is made but according to the police officers interviewed, the HNP does not necessarily keep a copy of the police report with them in Fort National, nor are the case files updated (when an arrest is made for example). Therefore, if a victim returns to Fort National to enquire about the status of her case, Fort National personnel will not be in a position to provide the latter with any information. The HRS did not have access to the police reports in Fort National and was directed to follow up with the Port-au-Prince *commissariat* but the latter was unable to locate the reports in their premises, and in turn, the Port-au-Prince *commissariat* redirected the HRS back to Fort National for information.

75. Discrepancies relating to the dates were found at the *Tribunaux de paix*. In fact, very often the dates recorded in the police and tribunal registries did not match by one to three days. This combined with HRS observation outlines the fact that clerks and officers at police stations and tribunals are inattentive to accurate record keeping. The HRS interviewed clerks on this subject and they did not appear to find the date discrepancies to be of any importance.

E. Protection of Victims and Witnesses

76. Legal, medical, social and psychological assistance to victims and witnesses are provided by the MCFDF, OPC, and MINUSTAH, UN agencies or non-governmental organisations, including several women's rights organisations. There is no State-sponsored victim or witness protection programmes, particularly with respect to protecting victims of rape who complain of or fear reprisals by their perpetrators.

77. In Port-au-Prince, the United Nations High Commissioner for Refugees (UNHCR) financed local women's rights NGO, KOFAVIV, to run a safe house for vulnerable internally-displaced persons who are victims of sexual violence. This safe house was inaugurated on 25 June 2011 and presently hosts approximately 55 people (15 families). Victims are referred there by the HRS, IOM or KOFAVIV directly. The latter provides the victims with psycho-social, medical and legal assistance to help them rebuild their lives. Albeit limited in scope, this safe house is vital for the protection of victims of rape in Port-au-Prince. On 8 March 2012, another safe house was opened for women and girls victims of SGBV in Petit-Goâve. It is run by a local NGO "*Espoir des Femmes Haïtiennes*" with the financial support of UNHCR and the French Red Cross. This safe house has a capacity to host 16 victims who can stay for up to six months.

78. The lack of State-sponsored protection programmes for victims of rape is a key cause for the low number of complaints for rape lodged at the police station as in many cases the perpetrators live near the victim. The HRS is concerned at the absence of an effective mechanism to ensure the protection of and assistance to witnesses and victims of human rights violations and abuses, which has a negative impact on the willingness and ability of witnesses and victims to lodge complaints, participate in investigations and/or to testify in proceedings.

III. THE RESPONSE OF THE HAITIAN CRIMINAL JUSTICE SYSTEM TO RAPE

A. Opening of Judicial Investigations

79. As studied above, the police refer cases of rape filed with them to either the *Tribunal de paix*, the BPM or the *commissaire du gouvernement* in a very haphazard fashion but they mostly often choose to first refer cases of rape to a *Tribunal de paix*.

80. According to Haitian law, the *juge de paix* is competent to hear cases of infringements (*contraventions*) but is not authorised to conduct full investigations in criminal cases, a responsibility reserved for the *juge d'instruction*. However, the *juges de paix* are mandated⁵⁵ to serve in a police capacity to conduct *prima facie* investigations of crimes, including rapes. In fact, when a *juge de paix* receives a rape complaint, whether filed by the victim directly at the *Tribunal de paix* or referred to him/her by the police, the *juge de paix* can conduct a preliminary inquiry, equivalent to an initial police inquiry. The *juges de paix* are required to refer a case to the *commissaire du gouvernement* within 48 hours of receiving it.⁵⁶

Abandonment of Complaints and Out-of-Court Settlements

81. The abandonment of rape cases and the tendency to settle such cases in out-of-court settlements is a concern as regards impunity for rape. The HRS discussed impunity for rape cases with several *juges d'instruction* in the Port-au-Prince, including at the Croix-des-Bouquets Court. The *juges d'instruction* expressed their concern that the majority of sexual violence cases are settled out of court because, they said, in most instances perpetrators are closely associated with victims and their families. The *juges d'instruction* noted that even when cases are taken to court they are often abandoned by the victim prompting the *Parquet* or *juge d'instruction* to drop charges or simply disappear.

⁵⁵ Article 11 du *Code d'instruction criminelle*.

⁵⁶ If the person is under arrest.

82. A *juge de paix* interviewed by the HRS in Port-au-Prince stated that his tribunal does not always refer cases of rape to the *commissaire du gouvernement* as the parties involved reach out-of-court settlements before he can refer the cases further to the *Parquet*. He went on to say that he does not promote out-of-court settlements but that this is an established practice at every *Tribunal de paix* in the country. According to this judge, the families of the parties (victim/alleged perpetrator) meet in the halls and strike settlements without the assistance of the Tribunal. He also said that if the victim withdraws her complaint, he is then very likely to order the release of the detainee without consulting with the *Parquet* first. The practice described by this *juge de paix* is in contradiction with the law which requires the *juge de paix* to inform the *commissaire du gouvernement* of any criminal case.

83. The above statement was confirmed by a representative of the BAI who added that out-of-court settlements are often brokered by law students and recent graduates who linger around the halls of *Tribunaux de paix* waiting for prospective cases. According to the BAI, these law students exert a great deal of pressure on victims, especially those of sexual and gender-based violence, to engage in negotiations with perpetrators and their families. The reason behind being that these negotiations invariably involves a monetary compensation to be paid to the victim and her family. And if a deal is reached, the victim would have to pay a share of the compensation received to the law student for having brokered the deal. Given the shortcomings of the judicial system and the lack of trust in the justice system in Haiti, many victims will consider this option as the least bad one to obtain at least some sort of reparation.

84. At the Fort National police station the officers stated that they do mediation themselves but only in domestic violence cases and reportedly never for rape, leaving a lot of room for the police to determine what domestic violence is.

85. Albeit illegal, the payment of compensation is the most frequent reason for the abandonment of rape complaints. The negotiation of out-of-court settlements in criminal cases where a *prima facie* case has been established is illegal in Haiti. Therefore, according to BAI, when a compensation deal is reached between an alleged perpetrator and a victim of rape, the lawyer will reportedly ask the *juge de paix* to “disappear” with the case. An officer at the *Parquet* of Port-au-Prince confirmed that this practice does exist and regretted that the *juges de paix* are increasingly overreaching their mandate in criminal cases, especially in rape cases. This practice may explain the high percentage of cases which were referred by the police to a *tribunal de paix* but never made to the *Parquet*.

B. Prosecution and Trials

86. Attrition, meaning the number of cases that fail to make it to court, is an important indicator of access to justice. None of the rape cases monitored by the HRS for this study made it to trial over a year after they were originally registered by the police.

87. The HRS found that a total of 62 complaints were registered at the police stations reviewed between June and August 2010. Out of these 62 cases, the HRS found that 25 cases were effectively received by the *Parquet*, who then referred 11 cases to be investigated by the *cabinet d'instruction*. Four of those cases were dismissed by the *juge d'instruction* and the remaining are still being investigated, with the exception of one that has been referred to trial. No case actually went to trial well over one year after being first registered by the police. The most common reasons for the rape cases not reaching trial stage are: 1) lack of police diligence in cases where the victim could not identify her aggressor; 2) the fact that “out-of-court settlements” are reached before the file reaches the *Parquet*, especially at the level of the *Tribunaux de paix* and 3) the victim’s failure to appear before the investigating magistrate to give evidence. These reflect the structural challenges which exist in challenging impunity for sexual crimes.

88. When a case of rape is referred to the *Parquet*, the *commissaire du gouvernement* can, based on the police report or preliminary report made by the *juge de paix*, decide to go ahead with the prosecution. The law requires the *Parquet* to refer criminal cases to the *juge d'instruction* of the TPI for investigations. The *juge d'instruction* should perform the investigations independently and if there is enough evidence, commit the case to trial by issuing an *ordonnance de renvoi* to the competent court, for instance, *Tribunal de police* for *contraventions*, *Tribunal correctionnel* for *délits*, and *Tribunal criminel* for *crimes* after the *commissaire du gouvernement* issues his/her final *réquisitoire définitif*. The *Doyen* of the TPI⁵⁷ will then be required to add the case to the roster of criminal cases to be heard in the next criminal hearing (*assises* session). Once the *Parquet* receives a rape case, the *commissaire du gouvernement* should check if the file is complete and if there is enough *prima facie* evidence against the alleged perpetrator to pursue a case against him.

89. All the rape cases referred to the *Parquet* by the police and the *Tribunaux de paix* concern cases where the alleged aggressor is already detained. With regard to cases where the alleged rapist is identified but not yet in detention, these cases are not sent to the *Parquet*, as these remain with the police until, and if ever, the alleged rapist is arrested and only then is the file transferred to the *Parquet*.

90. According to the registry of the *Parquet*, only 11 out of the total of 25 rapes cases received by the *Parquet* were referred to a *juge d'instruction*. The HRS was unable to trace nine cases as there was no record whatsoever in the registry of the *Parquet* as to what happened to these files internally. The clerk was unable to explain this abnormality and pointed out to the lack of a computerised database. He also indicated that the cases might have been referred directly to the *Tribunal correctionnel* but after checking the latter's registry, this proved not to be the case. Through interviews with several magistrates, the HRS found that the lost files could possibly relate to cases which were dismissed by the *Parquet* for being too weak but that the decision was not properly recorded by the registrar and/or communicated to the victims. In fact, according to this same registry, the *commissaire du gouvernement* dismissed five out of the 25 rape cases received for failing to meet the minimum admissibility criteria which consists by and large of positive identification of the alleged rapist by the victim and the existence of a medical certificate.

91. In Port-au-Prince, out of the total of 11 cases referred by the *Parquet* to the *cabinets d'instruction*, the assigned *juges d'instruction* dismissed four cases, are continuing the investigation on six cases and issued an *ordonnance de renvoi* to the *tribunal criminal* for one case. It must be noted that not a single one of the cases being monitored by the HRS had actually gone to trial by the end of 2011.

92. It can be drawn from these cases that half of the suspects were released due to lack of evidence. According to trial judges interviewed this is due to the stigma felt by rape victims and the lack of trust by the population in the justice system in Haiti. In Port-au-Prince, the *juges d'instruction* stated that they cannot possibly order a case to go to trial without taking the victim's statement first. However, a large proportion of victims never show up to testify in front of the *juge d'instruction*, mostly because they are afraid but sometimes because the summons never reach the victim as the *huissier de justice* often fails to locate the victim.⁵⁸

Legal Aid

⁵⁷ The *tribunal criminal* is in principle convened at the *Cour d'Appel* but due to the dysfunctional system in Haiti at present, the TPIs convene the criminal *assises* hearings.

⁵⁸ Lack of contact information in the file submitted by the police is the most cited reason.

93. Local NGOs and the BAL provide free legal aid for victims of sexual and gender-based violence, including rape. However, the assistance that NGOs and BAL can provide to victims of rape is limited as they mostly provide aid to the accused and not to the victims. Counsel will usually work on several cases at a time thus limiting the amount of attention they can dedicate to each case. In fact, according to the BAI, only when a counsel actually spends considerable time chasing a judge about a particular case that this case would have any chance of going forward. This shows that it is possible to move cases forward when someone exerts pressure in a particular case.

IV. FINDINGS AND RECOMMENDATIONS

94. State responsibility with regard to rape and other forms of sexual violence must be seen in the light of the overall inadequacies of accessing and delivering justice in Haiti. Whilst Haiti recognises the problem and makes a serious effort to comply with its international legal obligations to investigate, prosecute, punish perpetrators and remedy survivors of sexual violence, much remains to be done before Haiti fulfils its due diligence responsibilities and its overall obligation to ensure rape is investigated and prosecuted. The low rate of prosecution identified in this report in the Port-au-Prince area is a result of the shortcomings of the police and judicial systems in general and responding to rape cases in particular, combined with the lack of resources allocated to the police and the judicial systems as well as obstacles women face in accessing the justice system. This situation prevents rape cases from moving through the criminal justice systems and has a negative impact on the human rights of defendants and victims alike.

95. Due to the very large backlog of cases waiting to be heard in the courts and the general lack of personnel in the justice system, access to justice for women, especially poor women, is severely impaired. Financial means have an important impact on legal assistance for victims, and few people in Haiti can afford to hire legal representatives, or even pay transportation costs.

96. Despite strong efforts from the HNP to increase the proportion of female police officers, a heavy gender imbalance among the police as well as legal professionals remain. Hence, victims of rape will invariably have to tell their stories to men, at essentially every stage of the procedure, from police to trial hearing.⁵⁹ This imbalance means that women who, knowing that they will have to tell their stories to men perceived to have a tendency to minimise rape in a highly stigmatised environment, often give up the procedure at some stage.

97. The current law does not adequately address sexual and gender-based violence nor does it accurately define rape. There is no legislation on prosecuting discrimination against women.

98. Due to lack of proper funding, the MCFDF cannot fully carry out its mandate, including its important coordination responsibilities.

99. The HNP does not work according to a pre-established referral system and protocols to deal with victims of sexual violence, leading to haphazard working methods and instances of re-victimization. Police officers lack basic training on women's rights and how to investigate rapes and address victims of sexual and gender-violence. Police need to investigate thoroughly, collecting all available evidence such as photographs of injury, and witness statements. The police also lack proper equipment and facilities, including forensic, to conduct investigations into rape cases.

⁵⁹ At the *Tribunal de Première Instance* of Port-au-Prince some of the *juges d'instruction* working on rape cases are women.

100. In the majority of police stations, there are no SGBV units or human resources to address rape and sexual violence cases, and complaints of rape and sexual violence are not recorded separately. Taken the specificities of rape, separate records are important to allow for easier reference and proper follow up of SGBV cases. When specialized units do exist, they are unable to operate fully due to lack of resources.

101. The *juges de paix* often overstretch their mandates, ruling on criminal cases, including rape, without making the proper referral to the *Parquet*. This practice has negative consequences on the rights of women to obtain legal remedy for rape. The Prosecution is *de facto* steadily losing its power in rape cases to *juge de paix* who are taking decisions they are not legally authorised to. This accepted practice results in a failure to provide women with equal protection before the law, reinforcing existing structural inequalities.

102. Once rape cases are referred to the *Parquet*, a large number of files are summarily dismissed and sometimes lost. Their record keeping is extremely inadequate, contributing to the denial of justice for victims of rape.

103. If a rape file ever makes to the *juge d'instruction*, the latter often is forced to dismiss the case because the victim does not show up for the audience to testify. Due to the backlog of cases and lack of resources, the investigations invariably take a long time to conclude, causing frustration to the victim who often gives up on the legal proceedings.

104. The procedure to obtain a free medical certificate attesting to a rape is very laborious depending on the health centre addressed. State hospitals, although able to respond to rape cases, are confronted with heavy bureaucracy in the issuance of medical certificates for victims of rape. While private services are available, the financial costs involved (mostly for paying transportation) are beyond the means of many victims.

105. Data collection is an important tool to inform policies and programmes to prevent violence from happening and protect victims. An increased focus on data and monitoring systems is needed, including better documentation by the police for coherent SGBV case management. It should be coordinated with the ongoing efforts of several actors, such as the *Concertation nationale* and other UN partners.

106. Victims are in charge of obtaining the arrest warrant and bringing it back to the HNP in order for the latter to proceed with an arrest. Unless the victim is proactive, the police will not proceed with investigations or arrests.

107. Witnesses and victims, who fear retaliation, do not benefit from protection after filing a complaint or testifying about a rape case.

108. It is essential that rape victims are not re-victimised once they report the crime. Accordingly, a range of measures need to be taken and existing procedure improved. MINUSTAH/Office of the High Commissioner for Human Rights recommend that the State:

- adopts specific legislation to prevent and punish discrimination and violence against women, including a precise and unambiguous definition of the crime of rape; and repeal any legal provisions discriminatory to women. New legislation should not require a medical certificate as a pre-requisite to prosecution;

- reinforces the capacities of police and judicial authorities on women’s rights and on violence against women in general, including gender-sensitive training on referral pathways and the protocol that should be followed from the moment a victim files a complaint with the police up to the trial stage, and ensure that the referral pathways are made clear to all HNP officers who should also receive training on the legal evidentiary requirements;
- implements a victim-centric approach whereas victims are aware of their rights and are always informed about the different procedures at all stages of the process through the police and the judiciary, possibly in the form of a simple card outlining victim’s rights and explaining the different police and judicial steps;
- supports community-based legal and paralegal services for adults and children. This would include developing the capacity of lawyers’ networks and the *Parquet*, but also paralegal professionals, including women, from the concerned community. Training for legal aid actors should include clear guidance on the illegality of out-of-court settlements;
- puts a definite halt to the practice in which the *juges de paix* overreach their mandates by ruling in criminal cases, including rape, as this practice: i) favours impunity, ii) weakens the criminal justice system and iii) fails to protect the rights of women to legal remedy;
- ensures that the police and the *juges de paix* promptly refer sex crimes to the Prosecutor and clearly communicates that “out of court” settlements are illegal;
- allocates a larger proportion of the national budget to the state institutions involved in SGBV response to allow them to carry out their mandate fully as well as to train all actors involved in the handling of rape cases from investigation to adjudication;
- fully recognizes that a medical certificate is not a pre-requirement for the prosecution of sexual and gender-based violence cases ; consult with civil society organizations before the development of any new template for medical certificates; and takes appropriate measures to ensure that the certificate is free of charge and delivered promptly;
- ensures that the police are properly resourced to carry out investigations and arrests and that the police do not rely on the victims to do their work;
- undertakes a national campaign against violence against women, including rape, in line with the Secretary-General’s initiative of February 2008, to modify social and cultural attitudes which are the root causes of most forms of violence targeting women;
- collects nationwide disaggregated data on the number of complaints, prosecutions and convictions.

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